E&H (1946) Department.

K SERIES.

G.O. No. 2184/PH

Dated 23.7.1946 12/

[Despatch Abstract.]

Endowments - Religious - South Kanara District - Kalavar village - Mangalore Taluk - Scheme for the proper administration of the Trust called "The Kalavar Church and its Properties" Mismanagement - Scheme suit - Ordered.

Revenue Department

From (Name) Khan Sahib G. Abdul Sattar Sahib Bahadur B.A.,
Designation Joint Secretary,
Station Board of Revenue, Madras.

Received ..... Registered .....

To

The Hon'ble Secretary to Government,
Education and Public Health Department.
(with enclosures)

1 MAY 1946

Enclosures: Ref: I. No. 676/46-3 dated 27th May 1946.194

Sir,

E. Bennett Esq., I.C.S.,
Commissioner of Land Revenue & Post War Reconstruction.

Sub: ENDOWMENTS - Religious -(South Kanara) - Mangalore taluk - Kalavar church - Trust properties - Recovery Filing of scheme suit under section 92 C.P.C. - Application from Joseph Souza and four others - Permission - Proposal - Submitted.

29040

Read: 1. From Sri Rao Bahadur P.Ramadoss B.A., Collector of South Kanara No.14170/45 A3 dated 21--2--1946.
2. From Sri K.Rama Varma Raja B.A.,Collector of South Kanara No.14170-45-A3 dated 5--4--1946.
3. From Sri K.Rama Varma Raja B.A., Collector of South Kanara No.14170-45-A3 dated 4--5--1946.

Reference

Submitted to the Government.

In the circumstances reported, the Board recommends the Collector's proposal to file a scheme suit and requests that the Government may be pleased to accord sanction to the Collector under Section 93 C.P.C. to permit the petitioners to file a scheme suit under Section 92 C.P.C.

for JOINT SECRETARY.

PVd/27-5-

Copy of letter No.14170-45-A3 dated 21--2--1946 from Sri Rao Bahadur P.Ramadoss, B.A., Collector of South Kanara.

SUITS - Civil Suits - Filing - Sanction under Section 92 - Civil Procedure Code - Application Submitted.

1. One Joseph Souza and four others have filed before me a petition requesting for sanction under Section 92 civil procedure Code to investitute legal proceedings against the Parish priest of Kalavar church by its present incumbent Rev.Fr. M.S.Fernandes and nine others for alleged mal-administration and mismanagement of church funds and for overriding the time honoured customery rights of the parishioners of Kalvar Church.

2. The main allegations against the existing administration of the Church properties are as follows:--

According to the petitioners, the administration of the church properties which consist of (a) Inam lands (b) Donated properties and (c) Trust properties, rests with the officers appointed by the parishioners assembled in a Junta.

Junta. The Junta which is to be convened by the parish priest is to consist of Gurkars (olderly people) and representatives of families in the parish. It should meet twice in a year - once prior to the festival of the patron Saint for the election of officers for the following year and another time soon after the festival for the consideration of audit report and for handing over of the management of the new officers. This custom was exercised from time immemorial and has also been recognised in judicial decisions In 1934 till which year the custom appears to have been observed, the parish priest failed to convene the second meeting of the Junta and since then the management of properties is being carried on by the Lord Bishop of Mangalore, through a Board consisting of the parish priest and nine persons nominated by him on the recommendation of the parish priest.

3. The petitioners allege that the formation of this Board is contrary to the customary right of the parishioners and that the administration carried on by it amounts to mal-administration and mismanagement in law. They also state that the proceeds of the properties are being diverted to the neighbouring parishes of Surathkal and Perar and also that a scheme for the construction of a parochial house at an estimated cost of Rs 30000/- has been planned. They view these financial commitments as acts of maladministration of the Church properties in fact and hence they propose to obtain a decree as provided for in Section 92 Civil Procedure Code.

4. The audit reports for the year 1942 to 1945 show that huge sums have been spent on the construction of new buildings and for litigation. If the Board of administration does not really represent the interests of the parishioners as alleged by the petitioners, the allegation that the scheme of construction of new buildings is detrimental to the finances of the church may not be unfounded. The question whether the Lord Bishop can annut the Junta and constitute an administrative body comprising of persons of his choice is a matter of canon law and can be decided only by a Civil Court. The Government Pleader, Mangalore when consulted says that there is a prima facie case made out for the grant of sanction applied for.

5. In the circumstances I submit that the permission sought for, may be granted.

/True copy/

Copy of letter Ref.14170-45-A3 dated 5--4--1946 from Sri K.Ramavarma Raja B.A., Collector of South Kanara.

CIVIL SUITS - (South Kanara) - Mangalore Taluk - Kalvar church Trust properties - Recovery - Filing of scheme - Suit - Application from Joseph Souza and 4 others - Permission - Proposal - Further report - Submitted.

Board's Reference No.676/46-1 dated 6--3--1946.

The Vakil in behalf of the petitioners, states that the petitioners are prepared to finance the entire litigation upto the stage of judgment and that in case they succeed in persuading the Court that a decree should be passed for a scheme for administration, they are entitled to ask the Court that provision may be made for their cost to be met from the funds of the institution.

2. Copies of judgments in Sub Court A.S.6/38 and High Court S.A. 9/41 have been produced to show that the custom of managing the church properties by an administration appointed by the Junta at least upto 1934 has been recognised.

3. The schedule of the properties to be annexed to the plaint is enclosed.

/True copy/

Copy of Ref.No.14170-45-A3 dated 4--5--1946 from Sri K. Rama Varma Raja B.A., Collector of South Kanara.

SUITS - Civil Suits - South Kanara - Mangalore Taluk - Kalavar Church Trust properties - Recovery - Filing of scheme suit - Application from Joseph Souza and 4 others Permission - Proposal - Further report - Submitted.
Ref: Board's Reference No.I.676/46-2 dated 18--4--1946.

All the enclosures ent along with Board's Ref.No.1.676/46-1 dated 8--3--1946 are resubmitted herewith. The petition of Joseph Souza and 4 others and copy of the draft plaint proposed to be filed by the petitioner in this case are among them. The schedule of properties to be annxed to the plaint are those comprised in holdings Nos.81 of Permude village, 16 of Kuthethur 44 of Hosbettu, 36 and 442 of Kalavar, 81 of Bala, 186 of Thokur (no.62) 49 of Kempadavu, 75 of Kolambu and 7 and 8 of Kanduvar. The adangal extracts of these properties are enclosed.

The copies of the Judgments in A.S.6/38 of the Sub Court South Kanara and S.A.9/41 of the High Court of Judicature, show that the custom of managing the trust properties of the church by an administration appointed by 'Junta' has been recognised prior to 1934. Certified copies of these judgments are also enclosed.

/True copy/

FOR JOINT SECRETARY.

FVd/27-5-

27.5.

Para 1 of draft Go. (2189 PH 23/7/46) as amended by Legal

Under section 93 of the Code of Civil Procedure, 1908 (Central Act V of 1908), His Excellency the Governor of Madras hereby empowers the Collector of South Kanara to give his consent in writing to the following persons, namely, Joseph Souza of Permude village, Piedade Francis Souza of Thokur village, Adam Louis Souza and Marcel Lobo of Kenjar village, and Joachim D'souza of Bala village, or any two or more of them, to institute, on their own responsibility, a suit under section 92 of the said Code in respect of the Kalavar St. Joesph's Church in Kalavar village, in the Mangalore Taluk of the South Kanara district and

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E & P.H. Department (F.1

Abstract.

Endowments - Religious - South Kanara District - Kalavar Village - Mangalore Taluk - Scheme for the proper administration of the Trust called "The Kalavar Church and its properties" - Mismanagement - Scheme Suit - Ordered.

(C.No. 29040)

Read the following :-

pp 1-2 cf From the Collector of South Kanara, No.14170/45.A-3 dated 21-2-46.

p2 cf do. do. dated 5-4-46

p2(a) cf do. do. ,, 4-5-46

pp 1-2 cf From the Board of Revenue, Ref.I-676/46-3 d/ 27-5-46

ORDER (Ms.) No. 2189 PH D. 23.7.46

Under Section 93 of the Code of Civil Procedure, 1908 (Central Act V of 1908), ~~His Excellency~~ the Governor of Madras hereby empowers the Collector of South Kanara to give his consent in writing to the following persons, namely, Joseph Souza of Permude Village, Piedade Francis Souza of Thokur Village, Adam Louis Souza and Marcel Lobo of Kenjar Village, and Joachim D'Souza of Bala Village, or any two or more of them, to institute, on their own responsibility, a suit under Section 92 of the said Code in respect of the Kalavar St. Joseph's Church in Kalavar Village, in the Mangalore Taluk of the South Kanara District and the properties endowed therefor.

2. The petitioners should bear the cost of litigation themselves.

SRK
22.7.46.

22/7/46

To
The Bd. of Rev (Q & O)
(with records returned)

The Collector of South Kanara (Q & O)
(with a spare copy for the petitioners)

Pl. ask Secy. to enclosures

Encls
1 affected folio
Fair copy

(Keep spare copy for Stock file)

1

E & P H Dept (7)

Endowments - Religious - South Kanara Dt. - Kalavar Village - Mangalore Taluk - Scheme for the proper administration of the Trust called "the Kalavar ~~St Joseph's~~ Church & its properties" - Mismanagement - ~~Power to file a Scheme Suit by the Collector~~ Petitioners ~~granted~~ - Ordered.

[C No 29040] Read :-

1) From the Collector of S. Kanara, No 14370/45-A3 dt 21.2.46

2) ——— do ——— do ——— dt 5/4/46

3) ——— do ——— do ——— dt 4/5/46

4) From the Board of Rev, Ref I - 676/46-3 dt 27.5.46

Order No

(Ms)

Under Sec 93 of the Code of Civil Procedure (Central Act V of 1908), H.E. the Governor of Madras empowers the Collector of South Kanara to accord sanction to Mr Joseph Souza and four others, to institute, on their own responsibility, a scheme suit under Section 92 of C.P.C. for the proper administration of a trust called "the Kalavar ~~St Joseph's~~ Church and its properties" in Kalavar Village, in the Mangalore Taluk in the South Kanara Dt. ~~the petitioners should be informed that they~~ should bear the cost of litigation themselves.

I/c precedent re Trusts (J)

is pleased to

RR 5/6/46

JD 5/6/46

For despatch orders
(See overleaf)

C.P.T.O.

To

The Board of Revenue
(with records returned)

The Collector of (Q+O)
South Kanara
(Q+O)
(with a spare copy for the petitioners)

26/7/46

Note :-

The draft order may be sent to Home & Legal Depts for acceptance or remarks

CR 5/6/46

SRK
6-6-46

5646

Legal

Legal dept 29040-1 Ft, Pt
6.6.1946

Ex Pt no.

A S. 3981

I have suggested a form in two or three cases recently. These may kindly be put up for reference.

ASSISTANT SECRETARY
7 JUN 1946
LEGAL DEPARTMENT

2 It is presumed that it will be open to any two of the five persons mentioned in the draft to institute the suit. This presumption may kindly be confirmed.

KR 8/6/46

E. & P. H. dept

Leg no 3984-1
8.6.46

GOVERNMENT OF MADRAS
11 JUN 1946
EDUCATION AND PUBLIC HEALTH DEPT

Ex Pt dept

Submitted. The papers referred to at 'A' above were put up in the files circulated to HH (SRK). They have not yet returned from circulation 3144 this may "lie over" till 21-6-46

CR 15/6/46

SRK
10646

17.6.46.

9

E & OH Dept

(R)

A Go. (No. 662 PH dt 6.3.1946) which has since been traced & which was approved by the present Deputy Secretary, Legal Department, is put up ~~at Flag (R)~~

M Certain other Gos were put up in a file sent in circulation to H H (HRE). The file has not yet returned from circulation. The file may be sent to Legal Dept.

AR 2/7/46

2/7/46

A. in D.S. Legal's note.

Confirmed.

SRK
3.7.46

Legal.

S. 4651

E & OH Dept.
29040-27, (PH)
3.7.46

ASSISTANT SECRETARY
4 - JUL 1946
LEGAL DEPARTMENT.

Legal Department.

Paragraph 1 of the draft at page 1 above may be recast as follows:-

"Under section 93 of the Code of Civil Procedure, 1908 (Central Act V of 1908), His Excellency the Governor of Madras hereby empowers the Collector of South Kanara to give his consent in writing to the following persons, namely, * Joseph Souza of Permude village, Piedade Francis Souza of Thokur village, Adam Louis Souza and Marcel Lobo of Kenjar village, and Joachim D'souza of Bala village, or any two or more of them, to institute, on their own responsibility, a suit under section 92 of the said Code in respect of the Kalavar St. Joesph's Church in Kalavar village, in the Mangalore Taluk of the South Kanara district and

* A spare copy is placed below.

Legal 4651-1
17.7.46

* The spelling etc of the names may be checked by E & H.

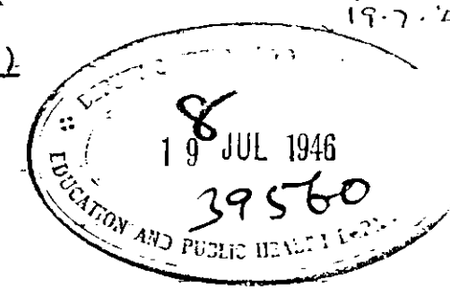
—the properties endowed therfor."

KM 18/7/46.

E & P.H.

legis 4651/1
19.7.46

E.&.P.H. Department (F.1)



The draft order, as amended by Legal Department, is submitted now for approval.

The file may, it is submitted, be circulated to H.M., H.R.E.

AP 22/7/46
JT 22.7.46

Issue unless there are special reasons why this should be submitted to H.M. (or special instructions)
As U.S. I was passing this class of cases — to say as D.S. I cannot do it is absurd.

SRK.
22.7.46.

[Go 2189 PH 9 23.7.46]

11

Government of Madras.
Education and P.H. Department.
G.O. Ms. No. 2189-P.H., dated the 23rd July 1946.

Abstract.

Endowments - Religious - South Kanara District - Kalavar village - Mangalore Taluk - Scheme for the proper administration of the Trust called "The Kalavar Church and its Properties" - Mismanagement - Scheme suit - Ordered.

Read the following:-

From the Collector of South Kanara, No.14170/45-A-3., dated 21st February, 5th April 1946 and 4th May 1946.
From the Board of Revenue, Ref.No.I.676/46-3, dated the 27th May 1946.

ORDER.

Under section 93 of the Code of Civil Procedure, 1908, (Central Act V of 1908), His Excellency the Governor of Madras hereby empowers the Collector of South Kanara to give his consent in writing to the following persons, namely, Joseph Souza of Permude village, Piedade Francis Souza of Thekur village, Adam Louis Souza and Marcel Lobo of Kenjar village, and Joachim D'Souza of Bala village, or any two or more of them, to institute, on their own responsibility, a suit under section 92 of the said Code in respect of the Kalavar St. Joseph's Church in Kalavar village, in the Mangalore Taluk of the South Kanara District and the properties endowed therefor.

2. The petitioners should bear the cost of litigation themselves.

(By Order of His Excellency the Governor).

S.R. Kaiwar,
Deputy Secretary.

To the Board of Revenue (with records returned).
" Collector of South Kanara. (with a spare copy for petitioners.
1.

True copy. Forwarded/By Order.

Superintendent.

ASR.

[Copy for stockfile]

Instructions

For the Despatches

Copy to be forwarded

&c : Copy

to :- One of the petitions

The petitioner's name

is :-

Joseph Louza of

Permude

village

Mangalore Tk

Mangalore